

STATE OF MICHIGAN  
DEPARTMENT OF LABOR & ECONOMIC GROWTH  
OFFICE OF FINANCIAL AND INSURANCE SERVICES

Before the Commissioner of the Office of Financial and Insurance Services

In the matter of:

James C. Mulholland, Jr.

Enforcement Case No. 05-3810

Respondent

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*Issued and entered*  
*on 16 November 2006*  
*by Frances K. Wallace*  
*Chief Deputy Commissioner*

CONSENT ORDER AND STIPULATION

A. FINDINGS OF FACT AND CONCLUSIONS OF LAW

It is alleged that the following statements are true and correct:

1. At all pertinent times, James C. Mulholland, Jr. ("Respondent") was a licensed insurance producer, transacting insurance business in the State of Michigan since August 27, 1980.
2. Respondent knew or had reason to know that Section 1239(1)(b) of the Insurance Code provides that the Commissioner may place on probation, suspend, or revoke a producer's license or may levy a civil fine under section 1244 or any combination of actions for violating any insurance laws or violating any regulation, subpoena, or order of the commissioner or of another state's insurance commissioner.
3. Respondent further knew or had reason to know that Section 1239(1)(h) of the Insurance Code provides that the Commissioner may place on probation, suspend, or revoke a producer's license or may levy a civil fine under section 1244 or any combination of actions using fraudulent, coercive, or dishonest practices or demonstrating incompetence, untrustworthiness, or financial irresponsibility in the conduct of business in this state or elsewhere.

4. By the conduct described below, Respondent violated Section 1239(1)(b) and (h) of the Insurance Code, and is therefore subject to license probation, suspension or revocation and/or the levying of civil fines pursuant to Section 1239(1), and Section 1244(1) of the Insurance Code.

**COUNT I**

5. On or about April 30, 2001, Respondent went to the home of his 78 year old insurance clients, \_\_\_\_\_ and his wife, \_\_\_\_\_ to obtain a loan from them. Respondent talked the \_\_\_\_\_ into this loan by promising that they would earn a higher rate of return on the loan than they could earn in their bank. Based upon a guarantee of 8% interest, the \_\_\_\_\_ agreed to loan Respondent \$5000 and Respondent provided the \_\_\_\_\_ with a Demand Note dated April 30, 2001 for the loan.
6. In October of 2002, Respondent returned to the \_\_\_\_\_ home, unsolicited, advising them to liquidate a Jackson National Life (JNL) annuity sold to them by Respondent in February of 2000, and loan Respondent the annuity proceeds. Respondent advised the \_\_\_\_\_ that he would pay them 8% interest, a higher rate of return than they were earning with JNL, and that the money from their annuity, along with any other money they loaned him, would be invested in real estate. Based upon Respondent's representation and promise of a higher interest rate, the \_\_\_\_\_ surrendered JNL annuity # \_\_\_\_\_.
7. The \_\_\_\_\_ \$22,000 annuity (JNL annuity # \_\_\_\_\_), purchased February 24, 2000, was an indexed annuity. Respondent knew if the \_\_\_\_\_ took money from this annuity before 2009, the \_\_\_\_\_ would receive only 90% of their investment plus the minimum interest rate of 3%. As this annuity was surrendered 2½ years after its inception, the surrender value in October of 2002 was \$21,431.47. At the recommendation of Respondent, however, the \_\_\_\_\_ signed JNL surrender forms, provided by Respondent, resulting in the issuance of the refund check. While the annuity was in effect long enough for Respondent to earn his commission, it was not in effect long enough for the \_\_\_\_\_ to retrieve even their original investment. On November 6, 2002, the \_\_\_\_\_ endorsed the JNL annuity surrender check # \_\_\_\_\_ over to Respondent, adding an additional \$19,569.12 from other personal funds, loaning Respondent an additional \$41,000.59.
8. On May 14, 2003, Respondent returned unsolicited to the home of the \_\_\_\_\_ encouraging them to invest more money with him at an interest rate of 8%, for real estate purchases. The \_\_\_\_\_ gave Respondent \$15,000 and received a year-end statement on their promissory note, crediting this deposit, and showing a new balance owed to the \_\_\_\_\_ in the amount of \$63,318.65. At no time did Respondent provide the \_\_\_\_\_ with a deed, an address or any other documentation to demonstrate that the funds were in anyway tied to a piece of property.
9. In December of 2004, Respondent again came back to the \_\_\_\_\_ home, unsolicited, and convinced the Hares to invest another \$5000 with him, again promising a 7% return. Respondent advised them to withdraw monies from their JNL IRA account. The Hare's



withdrew \$6565 from their IRA, kept \$1565 for themselves and loaned Respondent \$5000 via their personal check # [redacted] dated December 21, 2004. At the end of calendar year 2004, Respondent issued a promissory note statement to the [redacted] which showed that he owed the [redacted] \$75,830.90.

10. On April 20, 2005, the [redacted] made a demand for a refund of their promissory note with Respondent. Respondent complied with the demand issuing a refund check in the amount of \$77,462.25 to [redacted], as "note paid in full". Accompanying restitution to the [redacted], Respondent provided a copy of a promissory note statement that misrepresented the dates deposits were made to the [redacted] account.
11. In May of 2000, [redacted], Michigan entered into a promissory note with Respondent who was their Jackson National Life (JNL) insurance agent. Respondent advised the [redacted] that the rate of return on their promissory note would be 7%. The [redacted] had previously invested over \$75,000 in two JNL equity indexed annuities, sold to them by Respondent.
12. In 2004, Respondent met with the [redacted] and advised them that the rate of return on their promissory note with Respondent was significantly higher than the JNL yield. As a result, in August of 2004, the [redacted] surrendered their JNL annuity # [redacted] in the amount of \$51,507.67 and [redacted] in the amount of \$37,085.53 to invest these monies with Respondent. The [redacted] deposited the checks in their own account, retained some of the funds for their own use and issued two checks to Respondent for \$50,000 and \$10,000 as new deposits to their promissory notes.
13. In May 2004, Respondent obtained a security agent registration. Based upon information received by the Office of Financial and Insurance Services (OFIS), that Respondent was issuing unregistered securities, on May 5, 2005, OFIS sent a letter to Sean Ferguson, senior compliance officer of Respondent's broker dealer, Invest Financial Corporation (Invest). OFIS advised Invest of information obtained from the [redacted] and further indicated that Respondent admitted there were other clients from whom Respondent obtained loans and issued promissory notes. Mr. Ferguson spoke with Respondent and, in a May 31, 2005 letter of response to Mr. Ferguson, Respondent stated that the [redacted] invested \$5000 with him in 2001. Respondent then misrepresents that the [redacted] asked to invest an additional \$70,000 with Respondent in November of 2002.
14. Before becoming a registered securities agent, Respondent entered into promissory notes with several of his insurance clients. The following individuals are insurance clients and family of insurance clients with whom Respondent entered into promissory notes from late 1990s to 2004.

[redacted] entered into a promissory note with Respondent in October of 2000.  
[redacted] entered into a promissory note with Respondent in January of 2003.  
[redacted] entered into a promissory note with Respondent in June of 2004.

entered into a promissory note with Respondent in the late 1990s.

15. Respondent admits that he entered into several promissory notes with individuals who may or may not have been his insurance or securities clients. He contends, however, that he did not take monies relative to promissory notes after obtaining his securities registration.
16. On September 12, 1991, the Corporation and Securities Bureau and Respondent entered into a Consent Order to revoke Respondent's securities agent registration for various violations of the Michigan Uniform Securities Act, (Act) including but not limited to the offer and sale of non-exempt and unregistered securities in the form of promissory notes. Therefore, Respondent knew that promissory notes, such as the promissory notes referenced above, are a security under the Act. Respondent further knew that the offer or sale of non-exempt unregistered securities, such as the promissory notes referenced above, is a violation of the Act.
17. Respondent's counsel, James L. Witzel, further confirmed in an April 29, 2005 letter to Larry Wood of OFIS that Respondent had not secured any loans from any of his clients subsequent to the date of receiving his securities registration. Contrary to the representations made in Witzel's April 29, 2005 letter to Larry Wood of OFIS and in Respondent's May 31, 2005 letter to his broker dealer, Sean Ferguson, Respondent did obtain additional funds after receipt of his securities registration.
18. While Respondent did obtain the initial \$5000 from the [redacted] in 2001, an additional \$41,000.59 in November of 2002, an additional \$15,000 in 2003, and in direct contradiction to his representation to his broker dealer's compliance officer, he obtained an additional \$5000 in December of 2004. When restitution was made to the [redacted] in April of 2005, Respondent provided to the [redacted] and to OFIS a statement of promissory note with erroneous deposit dates in order to support his contentions that monies were not obtained after receipt of his securities registration.
19. Respondent's conduct with respect to the [redacted] and the Crippens, in encouraging surrender of an insured product to loan the money to Respondent, and his misrepresentations to the Office of Financial and Insurance Services as to when he ceased selling unregistered securities and to his Broker Dealer, demonstrates untrustworthiness and financial irresponsibility in business, in violation of Section 1239(1)(h) of the Michigan Insurance Code.

## COUNT II

20. On April 18, 2005, an OFIS investigator spoke on the telephone with Respondent, regarding his alleged offering and/or sale of non-exempt, unregistered securities to his insurance clients in the State of Michigan. During this telephone conversation,



Respondent admitted that he did obtain loans from his clients, but did not believe that there was any problem in doing this. The investigator advised Respondent that she wanted to review his files where monies were borrowed from his insurance clients and made arrangements to meet Respondent at his office on April 20, 2005. On April 20, 2005, the investigator received a telephone call from Respondent's attorney, James L. Witzel, during which Mr. Witzel asked to adjourn the scheduled April 20, 2005 file review until April 22, 2005. The investigator agreed to this adjournment, and Mr. Witzel and the investigator further agreed that the file review would be conducted on April 22, 2005 at OFIS' offices. On April 22, 2005, Mr. Witzel appeared at OFIS' offices for the scheduled file review without Respondent and without or any of the requested files. Consequently, the parties agreed to reschedule the file review for April 29, 2005, at OFIS' offices. Neither Mr. Witzel nor Respondent appeared at the scheduled April 29, 2005 file review.

21. On April 29, 2005, the OFIS investigator secured the entry of an Order to Produce Documents (the "Order to Produce"), entered pursuant to the Michigan Insurance Code, requiring Respondent to produce certain documents for inspection and copying at Respondent's office on May 3, 2005.
22. On the same date, the OFIS investigator additionally obtained a copy of a Subpoena Duces Tecum, issued pursuant to the Michigan Uniform Securities Act, compelling Respondent to produce certain documents at OFIS' offices on May 16, 2005 at 9:00 a.m.
23. On April 29, 2005, the investigator personally placed copies of the Order to Produce and Subpoena Duces Tecum in the mail slot at Respondent's business address located at 1451 E. Lansing Drive, Suite 218, East Lansing, Michigan 48823. That same day, this investigator also hand delivered copies of the Order to Produce and Subpoena Duces Tecum to Respondent's counsel, Mr. Witzel, at his law firm located 321 Woodland Pass, Suite 300, East Lansing, Michigan 48823. After hand delivering these documents, the OFIS investigator called Respondent's office on April 29 and confirmed with Melanie, the person who answered the office phone, that the documents had been received. Melanie confirmed receipt of said documents.
24. The Order to Produce required Respondent to produce the requested documents for examination at Respondent's office on May 3, 2005. The OFIS investigator called Respondent's office number on the morning and afternoon of May 3, 2005 to ascertain whether the documents would be produced. Both calls went unanswered, so the OFIS investigator left voicemail messages. On May 4, 2005, the OFIS investigator additionally appeared at Respondent's office in an attempt to review the requested documents, but no one appeared to be present.
25. The Subpoena Duces Tecum required James Mulholland and Mulholland Financial Services to produce the requested documents at Conference Room A of the OFIS offices on May 16, 2005 at 9:00 a.m. The OFIS investigator was present in OFIS Conference Room A from 8:45 a.m. to 9:15 a.m. on May 16, 2005, but neither Respondent nor

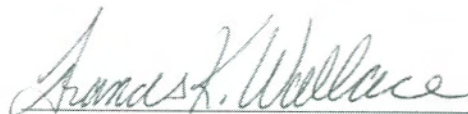
anyone from Mulholland Financial Services appeared as required by the Subpoena and no documents were produced.

26. On May 18, 2005, OFIS filed a Petition requesting the 30<sup>th</sup> Judicial District Court to enter an Order requiring Respondent and Mulholland Financial Services to fully comply with the terms of the investigatory subpoena, which Order was entered by the court on May 25, 2005. The Order provided that Respondent and Mulholland Financial Services must produce all of the documents requested no later than June 3, 2005 at 5pm. The requested documents included all promissory notes offered and/or sold by Respondent, the names, addresses and phone numbers of the persons to whom such promissory notes were issued, the dates of the notes, whether the notes were secured or unsecured, identification of any notes that had been repaid and the date and amount of the repayment and a list of all banks and account numbers used by Respondent from January of 2000 to the present. Respondents failed to comply with this Order producing only a one-page document stating they had no such files.
27. By failing to comply with the Commissioner's Order to Produce and the Subpoena Duces Tecum, Respondent violated Section 1239(1)(b) of the Insurance Code and has failed to uphold the standards as required by Section 1239(1)(h) of the Insurance Code.

#### B. ORDER

Based on the findings of fact and conclusions of law above and Respondent's stipulation, it is **ORDERED** that:

1. Respondent shall immediately cease and desist from operating in such a manner as to violate Section 1239(1)(b) and (h) of the Insurance Code.
2. Respondent's insurance producer license is **REVOKED**.
3. Respondent shall pay to the State of Michigan a civil fine of One Thousand Dollars (\$1000.00). Upon issuance and entry of this Order, OFIS will send Respondent an Invoice for the civil fine, which will be due within 30-days of issuance of the Invoice.



Frances K. Wallace  
Chief Deputy Commissioner